

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES L. GARDNER,

Plaintiff,

v.

CORRECTIONS OFFICER
ANDERSON, *et al.*,

Defendants.

Civil Action No. 09-212 Johnstown

MEMORANDUM ORDER

Plaintiff's motion for leave to proceed *in forma pauperis* [1] and civil rights complaint were received by the Clerk of Court on July 31, 2009 and were referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. Plaintiff's *in forma pauperis* motion was unaccompanied by a certified copy of his institutional account statement(s) as required by 28 U.S.C. § 1915(a)(2). As a result, Magistrate Judge Baxter entered an order on August 12, 2009 [2] directing the Plaintiff to submit a certified copy of the required institutional account statement(s) on or before September 1, 2009 or suffer dismissal of this action for failure to prosecute. To date, Petitioner has failed to comply with the Magistrate Judge's August 12, 2009 Order.

Judge Baxter's Report and Recommendation, filed on December 8, 2009 [3], recommends that the instant civil action be dismissed for failure to prosecute, inasmuch as Plaintiff has failed to comply with the terms of the August 12, 2009 order by submitting the required account statement(s). Plaintiff was allowed ten (10) days from the date of service in which to file objections. Service was made on Plaintiff by certified mail at SCI Somerset, where he is incarcerated. To date, he has filed no objections to the Report and Recommendation.

After de novo review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 6th day of April, 2010;

IT IS ORDERED that the instant civil action be, and hereby is,
DISMISSED for Plaintiff's failure to prosecute.

The Report and Recommendation of Magistrate Judge Baxter, filed on December 8, 2009 [3], is adopted as the opinion of the Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

cm: James L. Gardner
EB-5411
SCI Somerset
1600 Walters Mill Road
Somerset, PA 15510

U.S. Magistrate Judge Susan Paradise Baxter